

Exhibit 8

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 09/30/2020

TIME: 12:50:00 PM

DEPT: C-67

JUDICIAL OFFICER PRESIDING: Martin W. Staven

CLERK: Patricia Ashworth

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2020-00015679-CU-IC-CTL** CASE INIT.DATE: 05/26/2020

CASE TITLE: **BEST REST MOTEL INC VS SEQUOIA INSURANCE COMPANY [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Insurance Coverage

APPEARANCES

The Court, having taken the above-entitled matter under submission on 09/25/2020 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Plaintiff dismissed Amtrust North America, Inc. for insurance coverage on June 26, 2020, so Amtrust's demurrer is moot.

Defendant Sequoia Insurance Co.'s demurrer to the complaint of plaintiff Best Rest Motel, Inc., dba Holiday Inn Express Old Town complaint is overruled. There are questions outside the complaint whether there is insurance coverage under this policy as a result of the coronavirus pandemic. Judicial notice is granted to defendant's exhibits 1-3, the various executive orders. The court grants judicial notice of exhibit 4, Department of Insurance "FAQ on business interruption insurance and other issues affecting California small businesses", and exhibits 5 and 6, the press releases, but not for the truth of the matters asserted therein.

Plaintiff's request for judicial notice of exhibits 1 and 2 are granted to the extent the County of San Diego Health and Human Services Agency, Public Health Services, Epidemiology and Immunization Services Branch; "County of San Diego – Coronavirus Disease 2019 (COVID-19) Interactive Data Set – Confirmed Cases by City" for the City of San Diego; (accessed September 14, 2020) published data, but not the for truth of the matters asserted.

Plaintiff's objections to the cases cited by defendant in the reply are overruled. There are sufficient facts alleged in the complaint to withstand a demurrer.

Defendant shall file and serve an answer by October 15 , 2020.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: BEST REST MOTEL INC VS SEQUOIA INSURANCE COMPANY [IMAGED]

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2020-00015679-CU-IC-CTL

I certify that I am not a party to this cause. I certify that a true copy of the Minute Order 09/30/2020 was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 09/30/2020.

Clerk of the Court, by:


P. Ashworth

, Deputy

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CHARLES S LIMANDRI
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☐ Additional names and address attached.

Transcript

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
CENTRAL DIVISION
DEPARTMENT C-67 BEFORE HON. EDDIE C. STURGEON, JUDGE

BEST REST MOTEL, INC., D/B/A)
HOLIDAY INN EXPRESS OLD TOWN,)
A CALIFORNIA CORPORATION,) DEMURRER HEARING
)
PLAINTIFFS,) CASE NO.
) 37-2020-00015679-CU-IC-CTL
VS.)
)
SEQUOIA INSURANCE COMPANY,)
CALIFORNIA CORPORATION;)
AMTRUST NORTH AMERICA, INC., A)
DELAWARE CORPORATION; AND DOES)
1 THROUGH 20, INCLUSIVE,)
)
DEFENDANTS.)
)

SEPTEMBER 25, 2020

FOR THE PLAINTIFFS:

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MICHELLE R. NEUENSWANDER
CERTIFIED SHORTHAND REPORTER
CSR NO. 12508

1 SAN DIEGO, CALIFORNIA, SEPTEMBER 25, 2020, 9:48 A.M.

2
3 P-R-O-C-E-E-D-I-N-G-S

4
5 THE COURT: BACK TO NO. 12. ALL RIGHT. THIS IS
6 MY FAVORITE CASE, I WANT YOU TO KNOW THAT, COUNSEL.
7 THIS IS BEST REST MOTEL VERSUS SEQUOIA INSURANCE.

8 PLAINTIFF, I HAVE --

9 MR. LIMANDRI: ATTORNEY CHARLES LIMANDRI,
10 YOUR HONOR.

11 THE COURT: THANK YOU.

12 ON THE PHONE FOR THE DEFENSE, I HAVE?

13 MS. THORPE: SARAH THORPE FOR SEQUOIA.

14 MR. KITT: TIMOTHY KITT FOR SEQUOIA, AS WELL.

15 THE COURT: FOR THE DEFENSE, WHO'S GOING TO ARGUE?

16 MS. THORPE: SARAH THORPE.

17 THE COURT: MS. THORPE, THANK YOU.

18 MS. THORPE, I SHOULD HAVE TOLD YOU THIS
19 BEFOREHAND, IN YOUR ARGUMENT, I WOULD LIKE TO LOOK AT
20 TWO CASES, THE STUDIO -- I WON'T SAY 54 -- BUT THE
21 STUDIO 417 CASE --

22 THE REPORTER: I'M SORRY, YOUR HONOR, I'M HAVING
23 TROUBLE HEARING YOU. YOUR HONOR, I'M HAVING TROUBLE
24 HEARING YOU. THIS IS MICHELLE, THE COURT REPORTER.

25 THE COURT: THAT'S BECAUSE I TURN MY BACK TO SEE
26 PEOPLE. SO I'LL MAKE SURE I SPEAK LOUDER.

27 THE REPORTER: THANK YOU.

28 THE COURT: I WANT BOTH PARTIES TO TALK ABOUT THE

1 STUDIO 417 CASE AND ALSO THE COOPER CASE IN THEIR
2 ARGUMENTS. ALSO --

3 MR. LIMANDRI: YES, YOUR HONOR.

4 THE COURT: -- ONE MORE THING. IT STATES
5 SPECIFICALLY PAGE 4, LINE 21, THE INSURED PROPERTY WAS
6 AND CONTINUES TO BE REPEATEDLY INSPECTED BY INDIVIDUAL
7 COUNTY EMPLOYEES FROM THE PREMISES UNTIL THE VIRUS IS
8 ELIMINATED IN THE REGION.

9 COUNSEL, I'LL WAIT FOR COMMENTS ON THAT, TOO.

10 MS. THORPE: YOUR HONOR, PLEASE TELL ME YOUR
11 REFERENCE AGAIN, WHERE YOU'RE LOOKING?

12 THE COURT: COMPLAINT, PAGE 4. THIS IS THE
13 COMPLAINT FILED BY THE PLAINTIFF, PAGE 4, LINE 21 TO 23.

14 MS. THORPE: OKAY.

15 THE COURT: WHY DON'T YOU JUST TAKE YOUR TIME NOW.
16 GOOD NEWS IS WE'VE GOT TIME. AND, MS. THORPE, MAKE YOUR
17 ARGUMENT.

18 MS. THORPE: YES, YOUR HONOR.

19 SO WE ARE AWARE OF YOUR TENTATIVE, YOUR HONOR,
20 WHICH IS THAT THE COMPLAINT ALLEGED ENOUGH TO GET PAST
21 THE DEMURRER. AND SO I DO WANT TO TALK ABOUT WHAT'S IN
22 THE COMPLAINT AND I ALSO WANT TO TALK ABOUT THE POLICY
23 LANGUAGE AND CALIFORNIA LAW. AND WE DON'T NEED TO LOOK
24 TO MISSOURI OR ANY OTHER STATE'S LAW BECAUSE WE HAVE
25 CALIFORNIA LAW ON THIS.

26 SO FIRST OF ALL, IT'S VERY IMPORTANT WHAT'S IN THE
27 COMPLAINT AND YOU JUST POINTED TO A PARTICULAR
28 PROVISION, BUT WHAT THE -- WHAT THAT SAYS AT LINES 21 TO

1 24 IS THAT -- IT SAYS, "LOCAL GOVERNMENTS ACROSS THE
2 COUNTRY URGE THEIR CITIZENS TO ACT AS IF THEY WERE
3 INFECTED AND AS IF EVERYONE WAS AROUND THEM WAS INFECTED
4 WITH A NOVEL AND HIGHLY INFECTIOUS VIRUS." SO THAT IS
5 NOT SAYING THAT THERE WAS SUCH A THING AT THE HOTEL.

6 SO WHAT'S IMPORTANT HERE IS THE COMPLAINT. AND
7 ATTACHED TO THIS COMPLAINT AS EXHIBIT B AND INCORPORATED
8 IN THE COMPLAINT IS THE DENIAL LETTER FOR THIS CLAIM
9 THAT ACTUALLY CAME IN, SO WE KNOW SOMETHING ABOUT THE
10 CLAIM. AND THE CLAIM THAT CAME IN TO SEQUOIA, THE
11 INSURED WAS ASKED, "IS THERE ANY PHYSICAL DAMAGE TO YOUR
12 HOTEL?"

13 AND THE INSURED SAID, "NO." AND THAT IS NOT
14 REFUTED BY THE PLAINTIFF. BEST REST DOESN'T SAY
15 ANYTHING ABOUT THAT IN ITS COMPLAINT. THAT IS THE FACTS
16 IN THE COMPLAINT. THAT LETTER ALSO SAID, "IF YOU HAVE
17 ANY OTHER INFORMATION, PLEASE TELL US SO WE CAN TAKE
18 THAT INTO CONSIDERATION WITH YOUR CLAIM." THE
19 PLAINTIFFS ALLEGE IN THEIR COMPLAINT AT PARAGRAPH 18
20 THROUGH 24 IS THAT A NUMBER OF ORDERS HAVE CAUSED THEM
21 TO HAVE TO SHUT DOWN THE HOTELS EITHER TEMPORARILY OR
22 FOR SOME PERIOD OF TIME AND THEY DO -- THAT IS WHAT HAS
23 CAUSED THE BUSINESS LOSS.

24 IN ADDRESSING THIS IN THEIR OPPOSITION, THE
25 PLAINTIFFS VERY CURIOUSLY, UNDER FACTUAL ALLEGATIONS,
26 ALLEGE AT PAGE 2 OF THEIR OPPOSITION, THAT THE DAMAGE TO
27 PROPERTY -- BECAUSE THEY KNOW THAT THEY NEED TO SHOW
28 PHYSICAL DAMAGE TO PROPERTY, THEY SAY IT'S THREE THINGS:

1 RESTRICTIONS ON TOURISM, AN ABSENCE OF RESERVATIONS, AND
2 LOST BUSINESS INCOME. NONE OF THAT IS PHYSICAL DAMAGE
3 TO THE INSURED PROPERTY. THAT'S TALKING ABOUT WHAT IS
4 YOUR ECONOMIC LOSS? WHAT HAPPENED? THAT'S THE EFFECT,
5 NOT THE CAUSE.

6 SO WHAT WE NEED TO DO IS SCOUR THIS COMPLAINT TO
7 SEE IF THE COURT IS RIGHT THAT THERE'S ENOUGH THERE AND
8 THERE ISN'T. ALL THERE IS IN PARAGRAPH 25, WHICH IS THE
9 ONE I THOUGHT YOU WOULD POINT TO, THERE IS A VAGUE
10 ALLEGATION THAT THERE'S COVID IN OR AROUND THE HOTEL.
11 THAT'S THE PARAGRAPH THAT PLAINTIFFS EMPHASIZE. AGAIN,
12 THAT COULD BE LIKE POLLEN DUST. THERE'S SOMETHING IN OR
13 AROUND THE HOTEL.

14 THERE'S NO ALLEGATIONS OF PHYSICAL ALTERATIONS OR
15 A NEED TO REPAIR THIS HOTEL, EITHER ALL OR PART OF IT.
16 AND IMPORTANTLY, THERE'S BEEN SOME TIME FOR PLAINTIFF TO
17 REMEDY THIS ABOUT THEIR ALLEGATIONS. THEY GOT THE
18 CHANCE TO IN RESPONSE TO THE DENIAL THAT WAS SENT TO
19 THEM IN APRIL 1, THEY HAD THE CHANCE TO WHEN THEY FILED
20 THIS COMPLAINT IN MAY, THEY HAD THE CHANCE TO IN
21 RESPONSE TO THIS DEMURRER THAT WAS FILED IN JUNE, AND
22 PLAINTIFF HAD NOT COME UP WITH ANY PHYSICAL ALTERATION,
23 PHYSICAL DAMAGE TO THEIR INSURED PROPERTY.

24 NOW, WHY DO I EMPHASIZE THOSE WORDS? THE SEQUOIA
25 POLICY ONLY PROVIDES COVERAGE FOR BUSINESS INTERRUPTION,
26 FOR CIVIL AUTHORITY COVERAGE, FOR DEPENDENT PROPERTY
27 COVERAGE IF THERE IS A DIRECT PHYSICAL LOSS OF OR DAMAGE
28 TO THE COVERED PROPERTY. AND WE -- THE LANGUAGE IS

1 CLEAR AND WE KNOW THAT UNDER CALIFORNIA LAW, IN
2 INTERPRETING THE POLICY, YOU HAVE TO LOOK AT THE POLICY
3 LANGUAGE IN YOUR REPLY. THAT'S THE INTENT OF THE PARTY.
4 YOU CANNOT USE PUBLIC POLICY AS AN INTERPRETIVE AID.
5 THAT IS WARD AT PAGE 553. THAT'S ONE PLACE WHERE THE
6 COURTS HAVE SAID THAT.

7 SO IT IS UNFORTUNATE. I MEAN, WE KNOW THIS IS A
8 DIFFICULT TIME. WE KNOW THIS IS AN EXTREMELY DIFFICULT
9 TIME FOR BUSINESSES, BUT THAT DOESN'T CHANGE CONTRACT
10 LANGUAGE. WHAT WE HAVE HERE IS A CONTRACT AND HAS VERY
11 SPECIFIC COVERAGE. THE COVERAGE IS FOR PHYSICAL
12 ALTERATIONS.

13 THE BEST EXAMPLES ARE IN LOOKING AT ALL THE CASE
14 LAW, THE CASES THAT THE PARTIES HAVE CITED TO YOU, IT
15 WOULD BE SO EASY IF THIS WAS A FIRE THAT HAD HARMED A
16 PROPERTY. THEY WOULD KNOW WAS THE PROPERTY DESTROYED,
17 WAS IT DAMAGED, DOES IT HAVE TO BE REPAIRED? IT IS
18 HARDER WHEN IT'S SOMETHING YOU CAN'T SEE. AND THAT'S
19 WHY THE EXAMPLES OF SMOKE AND SEWAGE AND THINGS LIKE
20 THAT HAVE BEEN OFFERED. BUT THE CASES THAT FIND
21 COVERAGE, FIND THAT THERE IS, IN THE WORDS OF THE COURT
22 FROM MRI HEALTH CARE, A DISTINCT, DEMONSTRABLE PHYSICAL
23 ALTERATION OF THE PROPERTY. THAT'S MRI HEALTH CARE AT
24 PAGE 39.

25 SO UNDER ALL OF THESE COVERAGES THAT IS BUSINESS
26 INCOME COVERAGE, YOU NEED A DIRECT PHYSICAL LOSS OF OR
27 DAMAGE TO THE INSURED'S PROPERTY. MRI HEALTH CARE AT
28 PAGE 37 TALKS ABOUT A PHYSICAL DAMAGE THAT NEEDS TO BE

1 REPAIRED. THAT'S WHY EXAMPLES LIKE SMOKE ALL IN A
2 BUILDING THAT GETS INTO THE WALLS AND THE CARPETS AND
3 THE SOFT SURFACES, IF YOU HAD TO YOU TAKE THAT ALL OUT
4 AND REPLACE IT ALL, THERE WOULD BE A DEEP CLEAN, YOU CAN
5 UNDERSTAND. THERE'S A -- THERE'S A PHYSICAL DAMAGE THAT
6 HAS HAPPENED.

7 BUT LOOK AT MAMA JO'S THAT WE CITE IN OUR REPLY.
8 IF IT'S JUST WIPING DOWN A SURFACE, THAT'S NOT PHYSICAL
9 DAMAGE. IF YOU HAVE TO HEIGHTEN THE AMOUNT OF YOUR
10 CLEANING, THAT'S NOT PHYSICAL DAMAGE TO THE PROPERTY.
11 AND THEY HAVEN'T EVEN SAID THAT. THEY HAVEN'T EVEN
12 ALLEGED THAT, THAT THEY HAD TO SHUT DOWN FOR A WEEK TO
13 CLEAN.

14 I'M SORRY. I CAN SEE YOUR LIPS MOVING, BUT I
15 CAN'T HEAR YOU, YOUR HONOR.

16 THE COURT: YOU KNOW, IT'S REALLY YOU SAY, JUDGE,
17 DON'T GO THERE, I WON'T GO THERE. ASSUMING THAT A PARTY
18 SAYS, JUDGE, YOU KNOW WHAT WE HAVE TO DO NOW? WE HAVE
19 TO CLEAN THE SURFACES EVERY DAY. EVERY TIME SOMEONE
20 COMES IN, WE'VE GOT TO CLEAN IT. WE'VE GOT TO DO ALL
21 THIS OF WORK TO MAKE SURE THE PLACE IS SANITARY.

22 WOULD THAT BE COVERED?

23 MS. THORPE: IT'S STILL NOT PHYSICAL DAMAGE. IT
24 IS NOT PHYSICAL DAMAGE. THE CLOSEST THING WE FOUND WAS
25 THE MAMA JO'S CASE.

26 THE COURT: OKAY. AGAIN, IF COVID WAS ON A
27 SURFACE AND THEY ARE CLEANING IT DOWN, THEN THAT'S NOT
28 PHYSICAL DAMAGE, CORRECT?

1 MS. THORPE: TO THE INSURED'S PROPERTY.

2 THE COURT: YOU BROKE. STATE THAT AGAIN. YOU
3 BROKE.

4 MS. THORPE: OKAY. SORRY. IF YOU LOOK AT
5 MAMA JO'S, WHICH IS A FLORIDA CASE, BUT IT RELIED ON
6 CALIFORNIA LAW, MRI HEALTH CARE, THE COURT THERE SAID,
7 IF IT'S JUST WIPING DOWN SOMETHING, IF IT'S JUST
8 CLEANING, YOU HAVE TO CLEAN MORE FREQUENTLY, THAT'S NOT
9 A PHYSICAL ALTERATION TO YOUR PROPERTY. YOUR PROPERTY
10 HAS NOT SUFFERED A PHYSICAL DAMAGE. THAT'S WHAT THOSE
11 WORDS IN THE POLICY MEAN. IT MEANS PHYSICAL DAMAGE TO
12 THE PROPERTY. SO I DON'T THINK THAT THIS CAN
13 ANTICIPATE -- I DON'T THINK THAT PLAINTIFFS COULD ADD
14 ANYTHING, AMEND THEIR COMPLAINT TO MAKE THIS A VIABLE
15 CLAIM. THEY'VE HAD THE OPPORTUNITY, AS I SAID, TO DO
16 THAT.

17 THEY SUGGEST IN THEIR OPPOSITION THAT THEY
18 RECENTLY LEARNED THERE'S AN EMPLOYEE THAT TESTED
19 POSITIVE RECENTLY. WHAT, IN THE LAST MONTH? HARD TO
20 SAY, THEY DON'T SAY AT WORK SPECIFIC. THEY DON'T SAY IF
21 IT'S A PERSON WHO CONTRACTED THE VIRUS AT THE HOTEL.
22 THEY DON'T SAY HOW THAT EQUATES WITH PHYSICAL DAMAGE TO
23 THE PROPERTY. SO I THINK WHAT IT SHOWS IS THEY STILL
24 DON'T HAVE PHYSICAL DAMAGE TO THE PROPERTY; OTHERWISE,
25 THEY WOULD HAVE SAID SO.

26 SO UNDER NONE OF THE COVERAGES CAN THEY STATE A
27 VIABLE CLAIM AND, THEREFORE, THE DEMURRER IS APPROPRIATE
28 RATHER THAN HAVING THE PARTY BRING A MOTION FOR SUMMARY

1 JUDGMENT.

2 THANK YOU, YOUR HONOR.

3 THE COURT: GOOD ARGUMENT, COUNSEL.

4 ALL RIGHT. PLAINTIFF, WHAT DO YOU SAY IN
5 RESPONSE?

6 MR. LIMANDRI: I WILL GO AHEAD, YOUR HONOR,
7 CHARLES LIMANDRI SPEAKING, ADDRESS POINTS THAT I
8 UNDERSTOOD COUNSEL WAS MAKING IN HER REMARKS BECAUSE I
9 WANT TO COVER IT IN A MORE ORGANIZED FASHION ACCORDING
10 TO THE NOTES THAT I WANTED TO USE. BUT SPECIFICALLY,
11 WITH REGARD TO THE POINTS THAT MS. THORPE ENDEAVORED TO
12 MAKE, SHE SAID THE DENIAL LETTER IS SOME TYPE OF
13 ADMISSION. THE DENIAL LETTER IS ATTACHED TO THE
14 COMPLAINT. IT'S GOT SOME SELF-SERVING COMMENT THAT PER
15 OUR CONVERSATION, ON MARCH 20TH THERE WAS NO DIRECT,
16 PHYSICAL DAMAGE TO THE COVERED PROPERTY.

17 WELL, I DON'T KNOW EXACTLY WHAT WAS IN THAT
18 CONVERSATION. OBVIOUSLY, IT'S INCUMBENT UPON THE
19 INSURANCE CARRIER TO INFORM THE INSURED OF THEIR RIGHTS
20 AND BENEFITS AVAILABLE TO THEM UNDER THE POLICY, BUT
21 WHAT I SEE IN THIS LETTER AND WHAT I HEAR FROM
22 MS. THORPE IS THEY ARE JUST CONVENIENTLY FOCUSING ON
23 THOSE WORDS IN THE POLICY THAT THEY THINK BEST SERVE THE
24 INSURANCE COMPANY'S INTEREST, WHICH, OF COURSE, IS NOT
25 THEIR JOB UNDER FAITH AND FAIR DEALING. THE ACTUAL
26 LANGUAGE IS DIRECT PHYSICAL LOSS OR DAMAGE, WHICH WAS
27 VERY IMPORTANT TO THE COURT IN THE STUDIO 417 CASE,
28 BECAUSE IT IS IN THE DISJUNCTIVE.

1 IF MS. THORPE WANTS TO KEEP HAMMERING ON -- ON
2 DAMAGE, THE WAY THAT SEQUOIA MISLEADINGLY DID IN THE
3 DENIAL LETTER, OKAY, BUT LOSS CONNOTES LOSS OF USE. AND
4 IN THE CASES THAT WE CITED, INCLUDING STUDIO 417, WHICH
5 IS VERY MUCH ON POINT TO OUR FACTS AS WELL AS THE COOPER
6 CASE WHICH WAS A CASE INVOLVING BACTERIA AS WELL AS THE
7 PATEL CASE, WHICH IS A CASE INVOLVING SMOKE. AND QUITE
8 FRANKLY, YOUR HONOR, I'M SURPRISED AT THE ADMISSION, AND
9 THAT'S WHAT IT IS, OF MS. THORPE THAT SMOKE IS INDEED A
10 PROPERTY DAMAGE BECAUSE YOU'VE GOT TO CLEAN SURFACES.
11 ISN'T THAT WHAT WE'RE TALKING ABOUT HERE? ISN'T THAT
12 WHAT MY CLIENT HAD TO DO? ISN'T THAT WHAT IS, IN FACT,
13 IN THE PROTOCOLS THAT THEY ASKED THE COURT TO TAKE
14 JUDICIAL NOTICE OF, THAT A PART OF THE COUNTY ORDERS
15 THAT REQUIRE SANITATION STANDARDS. SO ARE YOU GOING TO
16 HAVE TO CLEAN THE SMOKE ONCE AND THAT'S ENOUGH, BUT IF
17 YOU HAVE TO WIPE DOWN THE COUNTERS AND LARGE SURFACES IN
18 A HOTEL EVERY DAY FOR SIX MONTHS, THAT'S NOT ENOUGH?

19 YOUR HONOR, ISN'T THAT AT LEAST A FACTUAL QUESTION
20 AND ISN'T THAT SOMETHING THAT SHOULD BE RAISED AT
21 SUMMARY JUDGMENT OR TRIAL, FOR A JUDGE OR JURY TO DECIDE
22 AS OPPOSED TO A DEMURRER WHERE ALL FACTUAL INFERENCES
23 HAVE TO BE INTERPRETED IN FAVOR OF THE PLAINTIFF. AND
24 IT IS TWO PLACES IN THIS COMPLAINT. AND I LIKE THE WAY
25 COUNSEL JUST STOPPED READING WHEN IT'S CONVENIENT.
26 BECAUSE THE PARAGRAPH 18 DOESN'T JUST TALK ABOUT THE
27 COUNTY ORDERS THAT -- THAT THINGS MAY BE INFECTED, WELL,
28 THAT'S TRUE, THEY MAY BE.

1 BUT THEN WE GO ON TO SAY THAT IN THIS CASE IT
2 CONTINUES TO BE REPEATEDLY INFECTED BY INDIVIDUALS
3 COMING AND GOING FROM THE PREMISES UNTIL THE VIRUS IS
4 ELIMINATED IN THE REGION. THIS IS BASICALLY A HOTEL
5 AIRPORT. IT'S IN OLD TOWN, BUT IT'S A MILE OR SO OF THE
6 AIRPORT. AND THEY HAVE -- IF I HAD TO -- I SHOULDN'T
7 HAVE TO, I'VE GOT ADDITIONAL FACTS, BUT THEY HAVE
8 AIRLINE PERSONNEL CONSTANTLY STAYING THERE EXPOSED TO
9 EVERYBODY FROM EVERYWHERE.

10 BUT BEYOND THAT, ON PARAGRAPH 25, WHICH AS
11 MS. THORPE POINTED OUT, WE QUOTED IN THE COMPLAINT, IT
12 SAYS, THE VIRUS WAS CARRIED INTO THIS COUNTRY BY
13 INDIVIDUALS TRAVELING BETWEEN COUNTRIES WHO INFECTED
14 OTHERS AND THE FACILITIES THEY VISITED, INFECTING
15 PROPERTY IN AND AROUND THE INSURED PROPERTIES. NOW, I
16 COULD HAVE GONE ON AND ELABORATED AD NAUSEAM, BUT THE
17 FACT IS WE SAID THE VIRUS INFECTED THE INSURED PROPERTY
18 AND PROPERTY AROUND THE INSURED PROPERTY. THAT'S
19 SUFFICIENT FOR THE PURPOSES OF SHOWING THAT THERE IS
20 DIRECT PHYSICAL LOSS OR DAMAGE PARTICULARLY IN LIGHT OF
21 THE CASES THAT WE CITED WHERE LOSS WOULD INCLUDE
22 SOMETHING MORE AKIN TO A LOSS OF USE.

23 AND AGAIN, THAT'S NOT JUST STUDIO 417, PATEL, IT'S
24 THE COOPER CASE, WHICH INVOLVED BACTERIA, FOR PETE'S
25 SAKE. I DON'T KNOW HOW ONE CAN MAKE A DISTINCTION
26 BETWEEN A VIRUS AND BACTERIA, WHICH ARE BOTH
27 MICROORGANISMS, PARTICULARLY WHEN -- AND I THINK THIS IS
28 AN OVERRIDING POINT, YOUR HONOR, THERE'S NO VIRUS

1 EXCLUSION IN THIS POLICY, WHICH THERE IS IN SOME
2 80 PERCENT OF THESE BUSINESS INCOME LOSS POLICIES, WOULD
3 HAVE BEEN VERY EASY FOR SEQUOIA TO PUT THEM IN THE
4 POLICY AFTER THE SARS EPIDEMIC IN 2005. THE CARRIERS
5 ALL STARTED TO DO THAT IN 2006. THIS CARRIER CHOSE NOT
6 TO DO THAT. SO AT THE VERY LEAST, IT'S CREATED AN
7 AMBIGUITY, WHICH, OF COURSE, UNDER BASIC INSURANCE LAW
8 HAS TO BE INTERPRETED IN FAVOR OF THE INSURED. AND
9 EVERY INFERENCE, AGAIN, WHEN THERE ARE TWO REASONABLE
10 WAYS TO INTERPRET THE POLICY IS THAT IT HAS TO GO IN
11 FAVOR OF THE INSURED.

12 THERE IS NO DEFINITION OF DIRECT PHYSICAL LOSS OR
13 DAMAGE IN THIS POLICY. MS. THORPE KEEPS TALKING ABOUT,
14 OH, YOU HAVE TO SHOW STRUCTURAL DAMAGE. REALLY? WHERE
15 DOES IT SAY THAT IN THE POLICY? THE CLOSEST IT COMES IS
16 IN THE PART OF THE POLICY DEALING WITH LIABILITY
17 COVERAGE WHERE THE ONLY DEFINITION GIVEN FOR PROPERTY
18 DAMAGE SPECIFICALLY INCLUDES LOSS OF USE. THEY'RE GOING
19 TO SAY, OH, WELL, THAT'S A THIRD-PARTY LIABILITY. YOU
20 INTERPRET THE POLICY AS A WHOLE. YOU HAVE TO LOOK AT IT
21 THE WAY THE REASONABLE INSURED WOULD DO IT, SOMEONE WHO
22 IS NOT NECESSARILY TRAINED AS A JUDGE OR LAWYER WHO DOES
23 THIS AS A LIVING. THE REASONABLE INSURED WHO PURCHASED
24 THIS POLICY THAT THIS IS GOING TO INCLUDE BUSINESS
25 INCOME LOSS, AND THEN THEY BASICALLY HAVE EITHER
26 COMPLETELY SHUT DOWN OR IN THIS CASE, AGAIN, MUCH MORE
27 LIBERAL AND BROAD LANGUAGE THAT SAYS SUSPENSION, WHICH
28 IT DOES DEFINE TO INCLUDE A SLOW DOWN. A LOT OF

1 POLICIES SAY YOU HAVE TO HAVE A COMPLETE SHUT DOWN.
2 THIS POLICY DOESN'T.

3 NOT ONLY THAT, THIS POLICY HAS VERY BROAD LANGUAGE
4 BOTH FOR THE CIVIL ACTION COVERAGE AND FOR THE DEFENDANT
5 PROPERTY COVERAGE. FOR THE CIVIL ACTION COVERAGE,
6 UNLIKE CASES CITED BY SEQUOIA, IT DOESN'T SAY THAT THE
7 SHUTDOWN ORDER HAS TO BE DIRECTED TO THIS SPECIFIC
8 INSURED. IT DOESN'T SAY THAT ACCESS HAS TO BE
9 COMPLETELY BLOCKED. STUDIO 417 ADDRESSES THAT. IT SAYS
10 YOU COULD ACCEPT ANY ACCESS OR ALL ACCESS, BUT YOU JUST
11 SAID ACCESS. SO THERE WAS A PARTIAL LOSS OF BUSINESS IN
12 STUDIO 417 AS THERE OBVIOUSLY WAS TO OUR CLIENT AS IS
13 PLED IN THE COMPLAINT. AND AGAIN, ON DEMURRER, ALL OF
14 THIS IS TAKEN AS TRUE. THEY WANT TO CHALLENGE IT ON
15 SUMMARY JUDGMENT FACTUALLY, GO FOR IT. OKAY. WE'LL --
16 WE'LL BE HAPPY TO DO THAT. BUT ON DEMURRER, EVERYTHING
17 IN THE COMPLAINT SHOULD BE TAKEN AS TRUE.

18 AS FAR AS DEPENDENT PROPERTY GOES, THEY COULD HAVE
19 SAID WE'RE ONLY GOING TO ALLOW YOU TO COVER IF CERTAIN
20 OF YOUR LEADER PROPERTIES ARE INFECTED BY COVID-19 OR --
21 OR OTHERWISE DAMAGED IN SOME WAY. AGAIN, THEY WOULDN'T
22 HAVE IDENTIFIED COVID-19, BUT THEY COULD HAVE IDENTIFIED
23 THE LEADER PROPERTIES. THEY DON'T DO THAT. OTHER
24 POLICIES DO. THEY DON'T EVEN HAD HAVE A MILEAGE
25 LIMITATION FOR THE DAMAGE TO OTHER PROPERTIES FOR THE
26 DEPENDENT PROPERTY COVERAGE OR THE CIVIL ACTION
27 COVERAGE. IT'S A VERY BROAD COVERAGE.

28 NOW, WE SUBMITTED A REQUEST FOR JUDICIAL NOTICE,

1 BUT, YOUR HONOR, IT'S COMMON KNOWLEDGE AS WELL THAT
2 COVID-19 WAS PRESENT IN SAN DIEGO, RIGHT, ALL THE MAJOR
3 TOURIST ATTRACTIONS CLOSED DOWN, SEA WORLD, THE ZOO,
4 MOST OF OLD TOWN. SO ALL OF THESE AREAS WHERE OUR
5 CLIENT WOULD DRAW BUSINESS FROM, THEY COULDN'T DRAW
6 BUSINESS FROM THERE. SO THEY HAD A SLOWDOWN OR
7 SHUTDOWN.

8 IF THEY WANT TO HAVE A SUMMARY JUDGMENT AND THEY
9 CAN SHOW THAT SOMEONE AT SEA WORLD OR THE ZOO, YOU KNOW,
10 HAD COVID-19, THAT'S FINE. I ALREADY INDICATED THAT
11 SOMEONE AT THE HOTEL DID, WHICH WE LEARNED AFTER WE
12 FILED THE COMPLAINT. BUT WE HAVE SUFFICIENT FACTS PLED
13 ALREADY WITHOUT HAVING TO BE SPECIFIC. THEY CAN TEST
14 THAT IN DISCOVERY AT SUMMARY JUDGMENT IF THEY FEEL THAT
15 THAT'S PERTINENT.

16 FOR THE PURPOSES OF TODAY'S HEARING, I BELIEVE
17 YOUR HONOR GOT IT EXACTLY RIGHT ON THE TENTATIVE RULING.
18 THE COMPLAINT HAS SUFFICIENT FACTS AND THE CASES THAT
19 THEY CITE ALL HAVE UNIQUE POLICY PROVISIONS, UNIQUE
20 FACTS, AND UNIQUE APPLICATIONS OF LAW FROM OTHER
21 JURISDICTIONS, MOST OF WHICH ARE NOT NEARLY AS LIBERAL
22 IN THEIR INTERPRETATION OF THE LAW AS IT APPLIES TO
23 FINDING COVERAGE TO SUIT THE REASONABLE EXPECTATIONS OF
24 THE INSURED AS EXISTS UNDER CALIFORNIA LAW.

25 SO I CAN GO ON, YOUR HONOR, I HAD AN OUTLINE OF
26 OTHER SPECIFIC POINTS THAT I HAD WANTED TO ADDRESS. I
27 SHOULD MENTION SINCE COUNSEL CITED THE MRI CASE. IT'S
28 WHOLLY DISTINGUISHABLE. THERE THE INSURED SHUT DOWN

1 THEIR OWN MACHINE, THERE WAS NO EXTERNAL FORCE THAT CAME
2 TO BEAR AS WE HAVE WITH THE VIRUS PANDEMIC THAT
3 BASICALLY AFFECTED THE ENTIRE WORLD AND CERTAINLY MY
4 CLIENT'S HOTEL. AND IT WASN'T EVEN A
5 LOSS-OF-BUSINESS-INCOME CLAIM ON THE MRI CASE THAT IS
6 CITED; WHEREAS, THE CASES THAT WE CITE THAT INVOLVE A
7 LOSS OF USE, BUT THEY FOUND THAT THAT WOULD ALSO FIT THE
8 DIRECT PHYSICAL LOSS OR DAMAGE REQUIREMENT, HOWEVER ONE
9 WANTS TO CHARACTERIZE IT AS A LOSS OF USE OR DAMAGE. WE
10 CITED THE THEE SOMBRERO, I HAVE TO FIND IT, THE SOMBRERO
11 CASE AS WELL AS THE PATEL CASE AS WELL AS THE ARMSTRONG
12 CASE WHERE THEY SAID JUST HAVING ASBESTOS IN THE
13 BUILDING THAT WASN'T RELEASED COULD BE SUFFICIENT TO
14 TRIGGER COVERAGE.

15 SOME OF THESE ARE THIRD-PARTY POLICIES THAT TALK
16 ABOUT PHYSICAL LOSS, BUT THEY'RE TALKING ABOUT IT IN THE
17 SAME WAY AS IT APPEARS IN THE FIRST-PARTY CONTEXT IN
18 THIS CASE. IN THE PATEL CASE INVOLVING SMOKE THAT BOTH
19 PARTIES CITED WAS A FIRST-PARTY CASE WHERE THERE WAS
20 COVERAGE FOR THE CLEANING OF THE SMOKE. SO BETWEEN THAT
21 AND THE THEE SOMBRERO WHICH SAID YOU CAN CAP YOUR OWN TO
22 CREATE A STENCH, WHICH WOULD MAKE A PLACE UNINHABITABLE,
23 WOULD CREATE COVERAGE FOR LOSS OF USE OR DAMAGE. THOSE
24 ARE ALL CALIFORNIA LAW CASES, YOUR HONOR.

25 BUT THIS CASE IS BOTH [INAUDIBLE] IN ITS FACTS DUE
26 TO 417 WHERE THE JUDGE WENT THROUGH THIS ANALYSIS AND
27 SAID THERE WERE SUFFICIENT FACTS PLED FOR THE PLEADING
28 STAGE AS THERE ARE IN THIS CASE PARTICULARLY UNDER

1 PARAGRAPH 18 AND 25, WHICH I READ TO THE COURT AT THE
2 OUTSET OF MY ARGUMENT. I BELIEVE I HAVE NOW ADDRESSED
3 THE PRINCIPLE POINTS THAT I WANTED TO THAT WERE
4 ADDRESSED BY MS. THORPE.

5 THERE'S OTHER POINTS I CAN MAKE ABOUT WHY, YOU
6 KNOW, FOR EXAMPLE, EXTRA EXPENSE COVERAGE, YOUR HONOR --
7 EXTRA EXPENSE COVERAGE SPECIFICALLY WOULD DEAL WITH THE
8 NEED TO IMPLEMENT SANITATION PROCEDURES AND WE DO
9 INDICATE IN THE COMPLAINT ON PAGES 4, LINES 21 THROUGH
10 23 THAT THE COVID-19, WHICH EVERYBODY KNOWS BY NOW, I
11 THINK, CAN AND DOES ATTACH TO SURFACES. AGAIN, DIRECT
12 PHYSICAL LOSS AND WE HAVE THE SHUTDOWN ORDERS, WHICH THE
13 DEFENSE ATTACHED TO THEIR PAPERS OR THE COURT SHOWED
14 JUDICIAL NOTICE OF, WHICH TALKS ABOUT THE NEED FOR
15 SANITATION STANDARDS.

16 SO, AGAIN, WITH ALL OF THOSE FACTS PLED AND
17 OTHERWISE INFORMATION AVAILABLE THROUGH THE REQUEST FOR
18 JUDICIAL NOTICE THAT THIS COURT HAS GRANTED, I BELIEVE
19 THE COMPLAINT SHOULD BE MORE THAN SUFFICIENT TO SURVIVE
20 DEMUR AT THIS JUNCTURE.

21 THE ONLY OTHER THING I THINK I WANTED TO
22 MENTION -- I MAY HAVE DONE IT -- YEAH, I THINK I DID
23 THAT SUSPENSION IN THIS CASE ONLY REQUIRED A SLOWDOWN,
24 NOT SHUTDOWN. AND ON THE ISSUE THAT THE CALIFORNIA
25 COURTS WILL LOOK AT THE DIRECT PHYSICAL LOSS OR DAMAGE
26 AS SUSTAINED IS DIFFERENT AND NOT THE SAME THE WAY
27 SEQUOIA WANTS TO APPLY THEM, WE CITED A CALIFORNIA CASE
28 IN ADDITION TO THE STUDIO 417 CASE, WHICH WAS COOPER

1 VERSUS TRAVELERS INDEM. CO. OF ILLINOIS WHICH ALSO MAKES
2 THAT POINT.

3 SO WITH THAT, YOUR HONOR, I BELIEVE I'VE COVERED
4 THE MAIN POINTS THAT I FELT WOULD BE NECESSARY AT THIS
5 JUNCTURE. OF COURSE, I'M HAPPY TO ADDRESS ANY OTHER
6 POINTS THAT THE COURT MAY FEEL ARE IMPORTANT AT THIS
7 PARTICULAR TIME. THANK YOU VERY MUCH, YOUR HONOR.

8 MS. THORPE: YOUR HONOR, COULD I MAKE THREE
9 POINTS?

10 THE COURT: OF COURSE.

11 MS. THORPE: OKAY. SO FIRST OF ALL, SEQUOIA IS
12 NOT CHERRY PICKING LANGUAGE OUT OF THE POLICY, BUT
13 RATHER GOING RIGHT TO THE INSURING AGREEMENT. AND WE
14 DON'T GET OUT OF THE INSURING AGREEMENT AND DON'T HAVE
15 TO TALK ABOUT EXCLUSIONS BECAUSE THE CLAIM DOESN'T SIT
16 WITHIN THE INSURING AGREEMENT. SO THE INSURING
17 AGREEMENT DOES SAY THAT THE INSURED HAS TO SHOW THERE
18 WAS DIRECT PHYSICAL LOSS OF OR DAMAGE TO COVERED
19 PROPERTY. I FOCUSSED ON PHYSICAL DAMAGE.

20 COUNSEL SUGGEST LOSS OF USE IS A COVERAGE HERE,
21 BUT NOTICE THE POLICY SAID DIRECT PHYSICAL LOSS OF
22 PROPERTY. AND THE BEST EXAMPLE I WAS ABLE TO FIND IN
23 THE CALIFORNIA CASE LAW, BECAUSE IT JUST MAKES SO MUCH
24 SENSE, IS IN THE WARD CASE. IT TALKS ABOUT USE AND IT
25 TALKS ABOUT HOW THIS IS AN EXAMPLE OF LOSS OF PROPERTY.

26 THE INSURED HAD A BUILDING AND LAND AROUND THE
27 BUILDING AND THE -- WHAT HAPPENED WAS THE LAND SUBSIDED,
28 IT GOT WASHED AWAY, AND SO THEY COULDN'T USE THE

1 BUILDING AND THEY SOUGHT COVERAGE UNDER THEIR POLICY FOR
2 DAMAGE TO THE BUILDING. SO THE -- THEY LOST THE
3 BUILDING. THEY LOST -- BECAUSE THEY LOST THE LAND, THEY
4 COULDN'T -- THEY DIDN'T HAVE THE BUILDING, EVEN THOUGH
5 THE BUILDING ITSELF WAS NOT PHYSICALLY DAMAGED. BUT
6 THERE WAS PHYSICAL DAMAGE. IT WAS TO THE LAND RIGHT
7 BESIDE IT. SO THAT'S A GOOD EXAMPLE OF WHAT IS MEANT BY
8 LOSS OF PROPERTY.

9 THIRD, STUDIO 417. NOW, WHY SHOULDN'T WE LOOK AT
10 MISSOURI LAW? IT'S BECAUSE WE HAVE CALIFORNIA LAW, WE
11 DON'T NEED TO LOOK OUTSIDE CALIFORNIA. AND IF YOU WOULD
12 LOOK AT THAT LARGE COMPENDIUM OF CASES WE PROVIDED, IT
13 SHOWS THAT ALMOST EVERY CASE -- THIS IS UNFORTUNATELY A
14 BIG ISSUE. RIGHT? BUSINESSES ARE SHUT DOWN, BUSINESSES
15 ARE HAVING PROBLEMS BECAUSE OF ORDERS FROM COURT -- FROM
16 GOVERNMENT ENTITIES, AND IT'S BECAUSE OF THOSE
17 GOVERNMENT ORDERS, NOT BECAUSE OF PHYSICAL DAMAGE THAT
18 THEY SUSTAIN, THAT MANY BUSINESSES ARE HAVING A HARD
19 TIME. AND SO THEY HAVE, OF COURSE, LOOKED TO INSURANCE
20 AND THEIR INSURANCE COMPANIES HAVE DENIED THE CLAIMS AND
21 THAT'S CREATED LAWSUITS AND WE HAVE HAD MANY, MANY
22 MOTIONS TO DISMISS AND DEMURRERS AROUND THE COUNTRY.

23 AND YOU WILL SEE THAT THOSE MOTIONS TO DISMISS AND
24 DEMURRERS ARE BEING GRANTED EXCEPT FOR MISSOURI. AND
25 WHY IS THAT? MISSOURI JUST HAS DIFFERENT LAWS THAN
26 CALIFORNIA ON WHAT THAT TERM, "DIRECT PHYSICAL LOSS OF
27 OR DAMAGE TO INSURED PROPERTY" MEANS. AND MISSOURI IS
28 NOT APPLYING THE MRI HEALTH CARE'S DEFINITION. NOT

1 APPLYING DISTINCT, DEMONSTRABLE, PHYSICAL ALTERATION OF
2 THE PROPERTY. IT'S JUST DIFFERENT.

3 SO MISSOURI COURTS CAN DECIDE HOW THEY WANT TO
4 INTERPRET THE CASE LAW, BUT CALIFORNIA HAS ALREADY
5 INTERPRETED THIS POLICY LANGUAGE AND HAS SAID THAT
6 DIRECT PHYSICAL LOSS OF OR DAMAGE TO COVERED PROPERTY
7 REQUIRES A DISTINCT, DEMONSTRABLE, PHYSICAL ALTERATION
8 OF THE PROPERTY AND, THEREFORE, YOU DON'T NEED TO LOOK
9 TO STUDIO 417 OR ANY OTHER CASE FROM MISSOURI TO DECIDE
10 HOW CALIFORNIA COURTS ARE GOING TO DECIDE THIS QUESTION.

11 THOSE ARE MY LAST POINTS, YOUR HONOR. WE WOULD
12 ASK THAT YOU TAKE ANOTHER LOOK AT THE ALLEGATIONS AND I
13 THINK YOU'LL CONCLUDE THAT THERE IS NOT ENOUGH ALLEGED
14 HERE TO PASS THE DEMURRER STAGE.

15 THE COURT: I WANT TO THANK YOU BOTH, COUNSEL.
16 THIS IS WHY WE HAVE ARGUMENT. YOU BOTH PRESENT VERY
17 GOOD ARGUMENTS. OBVIOUSLY, FOR THIS COURT, THIS IS A
18 CASE OF FIRST IMPRESSION AND I WANT TO MAKE SURE I'M
19 COMFORTABLE WITH MY RULING. I AM GOING TO TAKE THIS
20 UNDER SUBMISSION AND LOOK AT IT OVER THE WEEKEND, BUT
21 YOU'LL HAVE A RULING TUESDAY FROM THIS COURT. RULING
22 TUESDAY. BOTH COUNSEL.

23 MR. LIMANDRI: THANK YOU, YOUR HONOR, FOR ALLOWING
24 US THE TIME. I APPRECIATE IT.

25 MS. THORPE: THANK YOU, YOUR HONOR.

26 THE COURT: WAIT A SECOND. COUNSEL, IT WILL BE
27 DONE BY FRIDAY. I'VE GOT A TRIAL ON TUESDAY. SORRY.

28 MS. THORPE: OKAY.

1 MR. LIMANDRI: OKAY.

2 MS. THORPE: WE UNDERSTAND.

3 MR. LIMANDRI: OKAY. WE'LL LOOK FORWARD TO IT.

4 THANK YOU, YOUR HONOR.

5 MS. THORPE: THANK YOU.

6 MR. LIMANDRI: APPRECIATE IT. HAVE A GREAT
7 WEEKEND.

8 (PROCEEDINGS ADJOURNED AT 10:19 A.M.)

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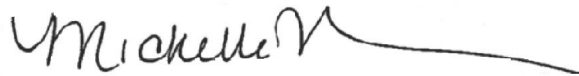
1 STATE OF CALIFORNIA)
:SS
2 COUNTY OF SAN DIEGO)
3

4 I, MICHELLE NEUENSWANDER, OFFICIAL REPORTER FOR
5 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND
6 FOR THE COUNTY OF SAN DIEGO, DO HEREBY CERTIFY:

7 THAT AS SUCH REPORTER, I REPORTED IN MACHINE
8 SHORTHAND THE PROCEEDINGS HELD IN THE FOREGOING CASE;

9 THAT MY NOTES WERE TRANSCRIBED INTO TYPEWRITING
10 UNDER MY DIRECTION AND THE PROCEEDINGS HELD ON
11 SEPTEMBER 25, 2020, CONTAINED WITHIN PAGES 1 THROUGH 21,
12 ARE A TRUE AND CORRECT TRANSCRIPTION.

13 DATED THIS 1ST DAY OF OCTOBER 2020.
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19 MICHELLE NEUENSWANDER
20 CSR NO. 12508
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